IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CIVIL MISC. APPEAL NO.48/05

Basir Mohammed **Versus** RSRTC & Anr.

DATE OF ORDER :: 05/07/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. B.L. Gupta, for appellant
Mr. O.P. Sharma, for respondent

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The workman-appellant herein while working as Conductor was dismissed from service after holding inquiry on 19th February, 1985 and the order as alleged was served upon him on 25th February, 1985 which was assailed by filing a civil suit before learned trial Judge on 22nd February, 1988. After adjudication of the dispute, the suit was partly decreed in favour of plaintiff-appellant – against which cross appeals were filed, the learned First Appellate Court after hearing the parties to the dispute framed issues vide order dated 8th December, 2004 and remanded the matter back to learned trial Judge to consider the issue framed after adjudication of the dispute in accordance with law. The said order has been assailed by plaintiff-appellant in the instant appeal.

After hearing counsel for parties, this court is of the opinion that there is some merit in the submission made by counsel for appellant, but an

objection has been raised by counsel for Corporation Mr. Sharma that the suit with respect to dismissal from service as held by Apex Court in **Rajasthan State Road Transport Corporation Vs. Zakir Hussain [(2005) 7 SCC 447]** is not maintainable before the civil court and only remedy available for the workman appellant is to approach and avail remedy available to him under Industrial Disputes Act, 1947.

I have heard counsel for parties on the basic issue which goes into the root of the matter and after taking into consideration the judgment **Rajasthan State Road Transport Corporation Vs. Zakir Hussain [supra]**, this court is of the opinion that the very suit preferred by appellant in assailing the order of his dismissal dated 19th February, 1985 was not maintainable – as such the judgment & decree dated 16/12/89 stands set aside. Accordingly, the present appeal also stands dismissed.

However, counsel for appellant submits that the dispute is of February, 1985 and 22 years have passed by now and the mechanism provided under the Act, 1947 takes its own time and that will certainly cause prejudice to him. Looking to peculiar facts of instant case, this court is of the opinion that if the appellant submits application before the conciliation officer for

making a reference of his dispute, the same may be considered expeditiously and reference to this effect be made by appropriate government to the Tribunal/Labour Court, as the case may be, and the adjudication thereof may be expedited. No order as to costs.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.